

Chapter 6

What do you do with a Dead Nazi? Allied Policy on the Execution and Disposal of War Criminals, 1945-55

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In the aftermath of the Second World War, thousands of former Nazis were prosecuted for crimes against peace, conspiracy, war crimes and crimes against humanity. The high profile quadripartite International Military Tribunal (IMT) at Nuremberg, held between November 1945 and October 1946, focused on the remnants of the Nazi leadership (Hermann Göring *et al*) while a plethora of trials against concentration camp staff, doctors, industrialists and other compromised individuals were conducted by each of the Allies within their respective zones. Many of these defendants received the death penalty for their crimes.

In western Germany, three key centres emerged for dispatching condemned prisoners: Hameln in the British Zone, Rastatt in the French Zone and Landsberg in the American Zone. Collectively, these sites accounted for the execution of nearly 500 Nazi war criminals.¹ Most were hanged, but some were shot or guillotined depending on the available manpower, resources and sensibilities of the relevant Allied power. The method of execution, however, was just one of many points of variation between the zones in how Nazi bodies were disposed. The policies adopted by the three western Allies affected how the National Socialist legacy was remembered long into the future, both in private by the families of those executed as well as in public by Nazi sympathisers, the popular press and West Germans more generally.

The impact of these war crimes proceedings, and the sense of German victimhood generated by the wider denazification process, is well documented.² Norbert Frei and Ronald Webster, meanwhile, have provided detailed analyses of the levels of public support shown toward condemned prisoners, and the general amnesty campaign that had emerged in West Germany by the early 1950s.³ Yet the results of these trials reveal more than just public criticism of war crimes proceedings, or reluctance to countenance the existence of a wider circle of perpetrators beyond the immediate Nazi leadership. Tracing the implementation of trial sentences provides important insights into the limits of Allied planning, the impact of growing ideological tensions over occupation policy and the difficult relationship between the occupiers and the occupied. The physical enactment of the death sentence is typically taken as a neat end point to the perpetrators' story; little attention has been paid to how the Allies implemented these procedures, or how they coped with the aftermath. One exception to this trend is Richard Evans, who discusses Allied attitudes towards capital punishment, the drafting of clemency procedures and public reactions to executions for crimes against the occupation itself, such as the post-war possession of firearms. However, while he acknowledges zonal variations in execution methods, he does not consider the disposal of the resultant corpses.⁴ Elsewhere, Norman Goda offers a detailed exploration of conditions in Spandau Prison and exposes the gaps in Allied preparations for holding (living) war criminals. Goda argues, convincingly, that the Allies were so preoccupied with the idea of executing the leading IMT defendants that they paid no serious attention to how, or where, the remainder of these men might serve their prison sentences.⁵ Goda's argument, however, can be pushed further: while capital punishment was certainly anticipated for the majority of the Nuremberg defendants, even this form of sentencing was poorly conceived and subject to protracted quadripartite discussions.

Considering the fate of executed Nazis underscores the challenges of 'doing occupation', especially the difficulty of balancing an ethical treatment of the dead with the realities of a post-conflict environment. Drawing upon policy documents, memoranda and reports from the UK National Archives, this chapter explores the fate of the IMT defendants and the results of the western zonal trials to illustrate the variations in Allied policy. Consequently, the diversity of the occupation experience demonstrates that it is highly misleading to couch this period in simplistic terms of East versus West. Moreover, examining the zonal trials helps to reframe the conventional post-war chronology, reminding us that the IMT was not the first war crimes trial to take place, and providing an opportunity to consider the impact of individual Allied practices on the formation of quadripartite policy and the longer-term legacy of Nazi rule.

Anticipating death sentences for major war criminals

The Allied Declaration of December 1942, published amid growing reports of the brutal persecution of Jews in occupied Poland, pledged to bring all those guilty of atrocities to account after the war. The Moscow Declaration of October 1943 reaffirmed this.⁶ However, it was only at the 1945 London Conference that the Allies agreed upon an international tribunal to dispense this justice.⁷ The intervening period saw Churchill, Stalin and Roosevelt all contemplating the summary execution of leading Nazis to the extent that, in September 1944, the Allies issued draft instructions for the disposal of their remains.⁸ These arrangements would release bodies to next-of-kin for burial, a procedure that complied with existing German law. The main points of concern at this time were ensuring that the condemned individual had access to a chaplain, and that a minimum interval was set between sentencing and actual execution to avoid seeming

too 'hasty'.⁹ There was an underlying sense that bodies should be handled with dignity and that German customs should not be trampled upon. While there is no direct evidence of the motives behind this approach, we might well assume that the Allies were hoping to avoid anything that might arouse local resentment and destabilise the occupation.

Given that all four Allied nations (and Germany itself) retained the death penalty at the start of this period, there was ample collective experience and legislation available for overseeing the execution and disposal of convicted criminals.¹⁰ Yet the treatment of Nazi personnel did not run smoothly. What model should they follow for disposing of the criminal corpse? Did the particularly horrific nature of Nazi crimes demand special measures? By the start of the first war crimes cases (Belsen, Dachau and the IMT) in autumn 1945, the disposal instructions of the year before had been revisited. The Allies now had a better sense of the sort of perpetrators with whom they were dealing and realised that releasing remains to relatives would no longer suffice. The liberation of concentration camps in spring 1945 had generated revulsion across the world and led to increasing calls for harsh measures against the Germans, seen most evidently through media denouncements of Nazi perpetrators as 'beasts', 'devils' and 'monsters'.¹¹ There was also mounting concern about the potential for burial sites to be transformed into Nazi shrines, exemplified by an Allied campaign to eradicate all vestiges of National Socialism from the German landscape.¹² However, rejecting familial burials was one thing. It would take another year before the Allies were able to determine an alternative method of disposal.

The IMT Charter, signed in London on 8 August 1945, empowered the Tribunal to impose the death penalty but said nothing about implementing such sentences.¹³ Richard Overy suggests that the Allies turned their attention to this problem shortly

after the opening of the IMT on 19 November 1945. He notes that the Allied Control Commission recommended the suspension of conventional German law vis-à-vis the disposal of executed criminals (restoring remains to relatives) in favour of secret burial within prison grounds, and that a common policy to this effect was drawn up before the end of the year.¹⁴ However, the principal directive he cites to support this argument is actually a British document referring to practices within the British Zone. As will be shown later in this chapter, this in itself came about amid British frustration at a lack of Four-Power consensus on the matter. Likewise, while Overy accepts that the disposal issue was revived in March 1946, thanks to an American suggestion to transfer prisoners from Nuremberg to Berlin for execution, he conveys the impression that the Allies' compromise solution of cremating remains in Munich emerged swiftly thereafter. In reality, Allied policy regarding the Nuremberg defendants moved at a much slower pace.¹⁵

Once the IMT began, the Control Council in Berlin, in which Allied policy was coordinated amongst the four occupying powers, debated arrangements for potential clemency appeals and the wisdom of allowing the press to observe executions, but paid no serious attention to the execution process itself.¹⁶ Some guidance finally emerged in September 1946, just as the IMT was drawing to a close, with the issuing of Control Council Directive No. 35. This confirmed that death sentences handed down by the IMT would be carried out on the fifteenth day after sentencing, an interval deemed sufficient for hearing appeals.¹⁷ The Directive added that 'unless otherwise ordered by the Tribunal, the death sentence shall be carried out without publicity by means of hanging or by guillotine, within the prison enclosure where the defendants concerned were confined at the time of the sentence, and the bodies of the said defendants shall be disposed of according to the instructions of the... [quadrupartite] commission'.¹⁸ This

was a significant advance, but, as the source indicates, there remained unanswered questions about precise disposal procedures.

In September 1946, one month before the verdicts were delivered, a Quadripartite Commission was finally established, charged specifically with overseeing the execution of the IMT sentences. Naturally, the Allies had other pressing matters to attend to during the first year of the occupation, yet the belated formation of this unit suggests that the practicalities of upholding the IMT's decisions were something of an afterthought; it left little time for detailed discussion.

The Quadripartite Commission comprised of military commanders Brigadier Edmund Paton-Walsh (UK), Brigadier-General Paul Morel (France), Major-General Paul Molkov (USSR) and Brigadier-General Roy Rickard (USA), who convened in Nuremberg six times between 27 September and the eventual execution of IMT defendants on 16 October 1946.¹⁹ The first meeting was chaired by Paton-Walsh, who quickly noted the IMT Charter's failure to prescribe a method of execution for condemned war criminals. The commission took the pragmatic view that they ought to prepare a decision in case the IMT failed to specify a killing method during sentencing, but they failed to reach agreement. The British and French called for the use of the guillotine, with Paton-Walsh arguing that this was the conventional form of death for a 'common felon' in Germany. The Americans preferred hanging, while the Soviets advocated firing squads. Molkov, however, conceded that since Control Council Directive No. 35 only permitted hanging or beheading, he would back the Americans. In the end, it was decided that if the IMT failed to specify the mode of execution, the default option adopted by the Commission would be hanging, with the Americans taking charge of the process as Executive Agents of the Commission. If, however, the IMT ruled that the war criminals should be

dispatched by guillotine, the British and the French would share execution duties with the former providing the equipment and the latter supplying the personnel to wield it.²⁰

The disposal of Nazi remains generated further debate. Paton-Walsh called for the burial of prisoners, again basing his decision on existing precedent but this time drawing upon domestic British practices for his frame of reference. Molkov, Rickard and Morel, however, were united in their preference for cremation and, with three against one, it was agreed this would become policy with the resultant ashes scattered in a secret location. This initial meeting of the Commission then adjourned so that the American representative could determine 'what facilities, if any, existed in the locality for the cremation of the bodies'.²¹

It is unclear exactly why the French, Soviets and Americans favoured cremation over burial. We might surmise it was considered easier logistically, and the best means of preventing shrines. Subsequent meetings of the Quadripartite Commissioners certainly stressed the need to avoid 'manifestations and pilgrimages at the places of burial'. The potential for mythmaking around dead Nazis had actually been raised by the most high-profile IMT defendant Hermann Göring, who had asserted that death was preferable to a prison sentence 'because those who are sentenced to life imprisonment never become martyrs'.²² Some of the Allied leadership cautioned, however, against too much concealment. A memorandum from the 43rd meeting of the Control Council, held on 10 October 1946, thus recorded that 'General McNarney [Military Governor of the American Zone] was opposed to an excess of secrecy about the executions as he felt that it would lend itself to rumours and to the building up of legends'.²³ As it transpired, McNarney's fears were not entirely groundless.

The arrangements drawn up by the Quadripartite Commission, though, remained the basis for handling the Nuremberg executions. Further meetings, all chaired by Morel,

were devoted to refining their implementation. The IMT eventually specified hanging for the condemned men when sentencing them on 1 October 1946 and, as agreed, the Americans duly took the lead on this, with Rickard immediately employing technicians from the Third US Army to prepare the execution site. The Commission, meanwhile, developed its action plan for handling the remains, noting that bodies would be taken to a nearby crematorium 'during the hours of darkness', and the ashes would then be transported to Nuremberg airport and 'dispersed from an airplane'.²⁴ By the fifth Commission meeting, held on 14 October 1946, the Americans were still looking for a suitable place to strew the ashes.²⁵

In all, ten IMT defendants were hanged at Nuremberg on 16 October 1946; Göring cheated the executioner by taking cyanide but was cremated alongside his former comrades. Despite its last-minute formation, the Commission initially appeared to have succeeded in its key objective: maintaining secrecy around the disposal arrangements. A report sent to the Control Council in Berlin three days later proudly proclaimed that 'no person other than the four members of your commission are aware of the time, place or method of dispersal'.²⁶ Subsequently, it has become commonly accepted that the ashes were scattered in the River Isar, a tale that has made its way into tourist literature, despite there being no documentary evidence for this.²⁷ Furthermore, the absence of human remains did not prevent physical markers to the Nazi dead from springing up. Relatives of Joachim von Ribbentrop, Alfred Jodl and Wilhelm Keitel erected memorial stones to their loved one within their family cemetery plots. Their personal grief and desire to mourn is understandable, but, over the years, these sites have attracted others anxious to recall the Nazi past. The website *findagrave.com*, for example, displays a photograph of Jodl's memorial but notes that the facility to leave 'virtual flowers' on the webpage is switched off 'because it was being continually

misused'.²⁸ Thus, despite the Allies' best efforts to conceal the final disposal location of the executed IMT defendants, the *imagined* resting place of these most notorious Nazi war criminals continues to excite fascination and acts of commemoration.

Zonal trials and variations

The IMT, however, was just one element of the Allied war crimes programme. Thousands of other Nazis were prosecuted before single-power military tribunals across occupied Germany. Control Council Law No. 10, drawn up on 20 December 1945, stipulated that these zonal trials could also impose the death penalty for serious offenders.²⁹ There was no mention, though, as to the means of execution or disposal of prisoners' remains. Once again, the Allies moved slowly: by the time this crucial law was published, the 54-day 'Belsen trial' was over, verdicts delivered and appeals heard, Josef Kramer and ten others had, in fact, been executed seven days earlier. Rather than preemptively determining policy, Control Council Law No. 10 appears a belated, reactive response to repeated British requests for guidance on how to proceed with the first set of major war criminals.

Moreover, Control Council Law No. 10 stated that 'the tribunal by which persons charged with offences hereunder shall be tried and the rules and procedure thereof shall be determined or designated by each Zone Commander for his respective Zone'.³⁰ The Allies thus had the freedom to approach the execution and disposal of war criminals however they felt fit. A uniform policy across all four occupation zones was considered desirable but untenable. Variations were to be expected, given the diverse local conditions in each zone, disparities in the number of bodies being processed, different domestic traditions, different levels of resources and, of course, changing political

circumstances as the wartime alliance unravelled towards the end of the decade. Nonetheless, the failure to standardise disposal policy significantly impacted on German-Allied relations and prompted different approaches to commemorative culture and managing the Nazi past across occupied Germany.

a) The British Zone

The first set of executions to occur as a result of a zonal trial came at the end of the 'Belsen trial' on 13 December 1945. Throughout the autumn, British legal, military and Foreign Office staff wrestled with the disposal question. A Special Legal Research Unit (SLRU) was charged with investigating whether existing German law prohibited the burial of executed remains within prison grounds, the standard UK procedure.³¹ While the SLRU confirmed there was no specific provision in German law to prevent this, it stressed that 'pursuant to section 454 of the German Criminal Code of criminal procedure, the body of the executed prisoner must be handed over to the next-of-kin at their request for a simple burial without ceremony'.³² Unclaimed bodies would be handed over for medical research at the nearest university, and, if this facility renounced its claim, local police would bury the remains; 'presumably', noted the SLRU, this could then take place within the prison precincts.³³

The reminder of these existing directives prompted some members of British Military Government to press for a policy akin to the original 1944 instructions, arguing that 'bodies of war criminals executed in British zone should be disposed of according to normal German procedure. There seems no reason for introducing British procedure and to do so would surely give rise to criticism'.³⁴ Such sentiment again suggests a concern about maintaining good relations between occupiers and occupied, yet the logic

was flawed. The decrees cited by researchers were formulated during the Third Reich. Adhering to them after 1945 contradicted wider Allied efforts to discredit the Nazi system, and enabled an unfortunate equation between Nazi war criminals and the remains of those executed by the Nazis themselves. The British were also seemingly ignorant of the irony that the Minister of the Interior ultimately responsible for instituting the existing measures was one of the men now on trial in Nuremberg.³⁵

Two days before the scheduled Belsen executions, the British were still mooting different disposal options including cremation and burial at sea.³⁶ Given the lack of guidelines from the Allied Control Council, there was a growing realisation that Britain needed to adopt its own solution. Consequently, on 11 December 1945, General Brian Robertson, Deputy Military Governor for the British Zone, decreed that ‘bodies of executed war criminals shall be buried without publicity or ceremony and without any signs to indicate positions of their graves, in unconsecrated ground in the prison precincts’.³⁷ There is no archival evidence as to why Robertson seemingly ignored the advice proffered by both the Foreign Office’s SLRU in London and Military Government staff in Germany, but for all of the initial concern about upholding German law, the British ultimately chose the disposal method most familiar to them, and one which avoided protracted discussions with relatives, medical institutions or local police. The decision enabled British penal staff to simply get on with the job soon after execution.

In all, a total of 155 war criminals were hanged in Hameln by the British between 1945 and 1950, 90 of whom were interred in prison grounds as directed, away from the public gaze.³⁸ These were rough-and-ready affairs: simple coffins stacked three deep without grave markers. By the end of 1946, though, the prison was running out of space so subsequent corpses were transported at night, in covered trucks by plainclothes military police officers, to the nearby public cemetery, *Friedhof am Wehl*.

Secrecy was the central feature of British disposal policy but this was to have a negative impact on the German population. Throughout the occupation, the British received numerous petitions from friends, relatives and former comrades of the deceased, anxious to determine their loved one's final resting place and learn more about the burial procedure itself. A Herr Schmidt from Kiel, for example, enquired whether his son had been buried in a coffin, whether a parson had performed a burial service and if the grave was tended.³⁹ Likewise, a Frau Schneider from Munich sought more information about her 'good husband', asking if she might buy and 'care for' his grave.⁴⁰ The wife of Hermann Lommes proved especially tenacious, sending several letters requesting the return of her husband's remains, and subsequently enlisting her lawyer and local curate to lobby on her behalf. She insisted:

Both my children and myself have an innate desire for their father to be buried in Neuendorf and for him to have a Christian burial. This was, moreover, the last wish of my husband. Therefore, I most humbly beseech the Military Government for the body to be handed over and transported home. I hope confidently that you will grant this, the last request of a sorrowing widow.⁴¹

The mother of Wilhelm Scharschmidt likewise sought the repatriation of remains, writing, 'I beg [you] ... Let me ... bring my son home and ... bury him here'.⁴²

The pleading language used throughout these sources seemingly points to a universal code for the proper handling of the dead, one that the Allies were expected to recognise and uphold. The obvious emphasis on familial ties (husband, father, son) presented the war criminals as 'ordinary', lovable men, a theme summed up by the fiancé of Karl Amberger, who repeatedly declared him to have been 'the best and dearest person in all the world'.⁴³ For the most part, these letters steered clear of making any comment on the trials or their verdicts. However, it is striking that three of those referenced here (Amberger, Lommes and Scharschmidt) had been stationed together

during the war and prosecuted amid British investigations into the murder of Allied prisoners of war at Dreierwald Aerodrome. This raises the question as to whether the relatives were writing independently of one another, or whether they were trying to galvanise an organised campaign against the perceived injustices of the occupying military government. The British, however, refused to divulge information or acquiesce to any of these appeals.

Alongside these emotive, written protests, Hameln witnessed attempts to enact physical memorials to the dead, including a 1948 proposal to erect individual wooden crosses for the war criminals interred in the cemetery, a site to which the local population had ready access. This was quickly quashed by the British.⁴⁴ Yet the fate of the executed Nazis was not so easily suppressed, and when the prison was restored to the Germans in 1953, the issue erupted into an international scandal. Descriptions of clandestine executions and burials appeared across the West German press, with leading tabloid *Bild-Zeitung* depicting the prison grounds as a 'Yard of Horror'.⁴⁵ The *Illustrierte Post*, meanwhile, offered a vivid account of how flowers, delicately placed in the vicinity by grieving relatives, had been cruelly thrown away by British prison staff.⁴⁶

While such articles repeatedly implied that the British had behaved in a callous or inhumane manner, the Nazi perpetrators were treated sympathetically. The press routinely inserted inverted commas around the term 'war criminal', implicitly casting doubt on their involvement in Nazi atrocities. The *Illustrierte Post* referred to the dead as 'political detainees', while both *Bild-Zeitung* and the *Hannoversche Allgemeine Zeitung* used the term 'survivors' to refer to those who had been transferred from Hameln to another prison.⁴⁷ The corpses, then, were portrayed as victims of occupation and victors' justice.

In 1954, the government of Lower Saxony announced that remains previously buried in Hameln prison would be exhumed and re-interred in the cemetery. *Bild-Zeitung* was one of several newspapers to express its hope that 'the dead will find ... that peace which has so long been denied them'.⁴⁸ In fact, the burial site continued to attract publicity as the setting for Nazi and anti-Nazi political demonstrations and Waffen-SS veterans' reunions until the site was finally levelled in 1986, showing that occupation policy could cast very long shadows.⁴⁹

b) The American and French Zones

The Americans conducted more war crimes prosecutions than either of their western allies, with the result that Landsberg Prison saw 284 executions compared with Hameln's 155. The death procedure within the American Zone was also a more protracted affair thanks to a lengthy appeals process. The first Dachau trial, for example, imposed death sentences against former camp commandant Martin Gottfried Weiss and 35 others on 13 December 1945, yet the hangings themselves did not take place until 28-29 May 1946.⁵⁰ Traces of the dead also lingered longer in the public consciousness given the US propensity, unlike the British or French, for photographing the condemned prisoner mounting the scaffold or lying in a coffin after the fact. Such images were supposed to show justice had been served, reducing unnecessary speculation about the fate of former Nazis.

American disposal policy also differed from that practiced in the British Zone, giving next-of-kin the chance to reclaim bodies after execution. This immediately avoided the stress of not knowing about a relative's final resting place and, in turn, helped to reduce conflict between occupiers and occupied. Just over half of those

executed in Landsberg remained unclaimed and were buried by US prison staff in the attached cemetery at Spöttinger. These were neat, individual graves with markers identifying the dead permitted later on, a notable contrast to the anonymous burials in Hameln. 44 per cent of those hanged in Landsberg, however, were claimed and repatriated to towns all over Germany, including many within the British Zone.⁵¹ Consequently, it could be argued that American practices regarding the Nazi dead fuelled the clamour for information regarding the Hameln executions. An awareness of divergent practices between occupation zones would only encourage Germans to view the whole matter as unfair.

Yet the American approach was not without controversy. In June 1951, the return of Otto Ohlendorf's body to Hildesheim (in the British Zone) attracted crowds of mourners and Hitler salutes.⁵² The US Vice Counsel Ernest Ramsaur reported back to Washington DC the presence of 'right-wing' political groups and funeral wreathes bearing inscriptions such as 'no more beautiful death in this world than to be struck down before the enemy'.⁵³ This reception owed much to Ohlendorf's notoriety as the chief defendant in the 1947-8 *Einsatzgruppen* case and position as one of the so-called 'Landsberg Seven', the last batch of war criminals to be executed by the Americans. Ohlendorf had been the focal point for a well-publicised amnesty campaign and his funeral thus became an opportunity for venting political protest against the occupation and the continuing imprisonment of other war criminals. Two other Nazis, Paul Blobel and Georg Schallermair, who were executed on the same day, likewise became the object of public mourning when interred in Spöttinger. Some 50 people had to be turned away from the scene by US military police, and several floral wreathes were left outside the cemetery.⁵⁴ The case of the 'Landsberg Seven' was especially emotive since the Basic Law of the newly formed Federal Republic had abolished capital punishment.⁵⁵

Ohlendorf and his comrades were caught in the awkward interregnum between the proclamation of the new West German state in 1949 and the awarding of full sovereignty in 1955, enabling Allied-imposed death sentences to still be performed.

War crimes policy in the French Zone is less well documented in the existing historiography and primary research of tripartite materials has, so far, failed to reveal any clear rationale for French actions.⁵⁶ Rastatt, however, held several notable cases between 1945 and 1951 including the prosecution of Heinrich Schwartz *et al* as part of the Natzweiler concentration camp trial, held between December 1946 and February 1947, and the 1946 trial of Fritz Schmoll and other staff from Neue Bremm camp. Further trials of German personnel were performed in France itself. Within the Zone, some 60 people were executed, the method of which differed sharply from the general practice in the US and British Zones. 51 of these war criminals were dispatched by firing squad in the early hours of the morning within the woods at Baden-Oos; the remaining nine were guillotined in Rastatt Prison. The former method quickly generated headlines about war criminals being 'shot at dawn' in the UK press.⁵⁷ The connotations of this phrase – commonly associated with deserters – implied that the dead were purely military figures. Similarly, the French tended to bury their executed war criminals within nearby cemeteries alongside other war dead, a juxtaposition that would inevitably help to blur the identities of the deceased and present them as 'normal' victims of conflict.⁵⁸ Indeed, some sense of this persists today online with websites such as *kriegstote.org*, which includes the final resting places of five of those shot by the French within a longer compilation of notable graves from the First and Second World Wars.⁵⁹ In reality, the majority of cases appearing before the French Military Tribunals involved SS and Gestapo personnel from various concentration camps.

There is at least one recorded case, though, of the French permitting a relative to reclaim a body. In July 1951, the remains of former Ravensbrück commandant Fritz Suhren were released to his sister for reburial in their hometown of Varel. The move was made on the proviso she did not 'misuse the occasion by staging any provocative demonstrations'.⁶⁰

In Search of a Four-Power Agreement

The western Allies thus proceeded to adopt their own course within their individual zones. Very often, their practices reflected typical domestic procedures for handling the criminal corpse. However, while there was never any second, international trial of Nazi personnel, the four powers continued to work together on the issue of the *potential* Nazi corpse, which in itself is revealing of broader ruling strategies and policies pursued by the different occupiers. Spandau Prison held the seven men imprisoned by the IMT and, although technically located within the British sector of West Berlin, it operated under quadripartite control in keeping with the constitution of the original trial. It was overseen by the Allied Kommandatura, the governing body for occupied Berlin and chairmanship of the prison governors rotated monthly between the four powers. With two prisoners, Constantin von Neurath and Erich Raeder, already suffering poor health and old age, and three serving life sentences, there was an obvious need for the Allies to develop a contingency plan for deaths in custody.

In October 1947, the Kommandatura accepted a proposal drawn up by the prison directors recommending cremation and secret scattering of ashes.⁶¹ Despite echoing the measures applied to the executed IMT defendants, the policy did not find universal approval. The British Kommandatura representative recommended that anyone who

died in Spandau be treated like an 'ordinary prisoner' with their body returned to relatives.⁶² Given that the Kommandatura would have no say over the disposal of former prisoners who died as free men, he felt there was 'no reason' to treat those who died in custody any differently.⁶³ The Americans rejected this argument, reminding their allies that 'if the bodies were released, the prisoners might come to be regarded as martyrs'.⁶⁴ The Soviets agreed, adding that releasing the bodies would contravene procedures established by the IMT. The French remained neutral on the matter and the British were forced to concede the point.

Interestingly, the arguments advanced here by the British and Americans reveal a fundamental disconnect from their own zonal practices. The Americans, of course, were willing to release other remains, and the British, as we have seen, took the opposite line in Hameln. In part, this discrepancy may be viewed as the natural outcome of different personnel operating at different levels of the occupation bureaucracy. It is also the case that the Allies quickly came to distinguish between 'major offenders' who had been condemned to death, and those who received a prison sentence; posthumous control over the latter was regarded as an unnecessary aggravation of their sentence.⁶⁵ In British eyes, therefore, these figures merited alternative disposal arrangements.

The matter was revived at the start of the 1950s amid a changing international political climate. Two separate German states had been established in 1949 and, as the Korean War marked the globalisation of the Cold War, the Federal Republic was increasingly recognised as an important ally in the fight against Communism. This, together with greater temporal distance from the Second World War, helped soften attitudes towards the Germans and earlier fears about potential shrines to Nazism also appear to have diminished. In 1952, for example, a British Information Report concluded that 'no undue demonstrations should be expected' if deceased Spandau prisoners were

handed over to relatives for burial.⁶⁶ Amid campaigns for a general amnesty for war criminals, members of the fledgling West German government were also taking an interest in the prison conditions at Spandau. An enquiry from Chancellor Adenauer about disposal procedures could be interpreted as a subtle form of pressure on the Allies.⁶⁷ The main impetus for policy revision, however, was the deteriorating health of von Neurath in 1951. Suddenly, the death of a prisoner went from an abstract possibility to an impending reality. As the Allies were forced to make logistical decisions about hospital transport and family visits, the British, never entirely happy with the 1947 ruling, seized their opportunity to call for a change in disposal policy. They initiated a new round of discussions by re-circulating the text of their original dissent regarding cremation. Calls for prisoners to be released for familial burial were couched in terms of the changed political situation and the 'humanity' that had to be shown towards prisoners' relatives, the latter theme no doubt amplified by the increased dialogue then underway between prison governors and von Neurath's concerned relatives. Certainly, the family endeavoured to arouse compassion for their cause, with Von Neurath's wife appealing to another famous spouse, Clementine Churchill, to exert influence on the matter. Frau Neurath pleaded, 'we have not been together on our golden wedding day but we hope to be together in death'.⁶⁸

Accordingly, the three western powers met in July 1951 to discuss the possibility of releasing bodies for burial. While the aim was to present a united front to the USSR, tripartite approval on the matter was hardly guaranteed. The French High Commissioner, André Francois-Poncet, initially opposed the move, warning that 'the return of bodies to families would give rise to further nationalistic demonstrations as ... occurred recently in the case of certain of the Landsberg war criminals'.⁶⁹ He was undoubtedly referring to the unfortunate scenes surrounding Ohlendorf's burial the

previous month. Unsurprisingly, US High Commissioner John McCloy took issue with Francois-Poncet's statement, pointing out that such demonstrations had, technically, taken place in the British Zone rather than Landsberg, and arguing that determined nationalists 'could equally make capital out of a cremated body'.⁷⁰ McCloy's words seem to have swayed the French representative: Francois-Poncet removed his objection and a new, western proposal based upon 'reasons of humanity' was consequently presented to the Soviets, calling for the body of a dead prisoner to be released to relatives for burial.⁷¹ The Soviets, however, were unmoved and merely reiterated the text of the 1947 agreement.⁷²

Undeterred, US, British and French representatives on the Allied High Commission spent the next three years plotting alternative courses of action to persuade the Soviets to reconsider. These included verbal approaches to key Russian personnel, the preparing of legal reports outlining precedents for releasing bodies and the drafting of preparatory press releases that, in the event of the sudden demise of a prisoner, would make it abundantly clear to the public that Soviet intransigence was to blame for next-of-kin being unable to bury their relative.⁷³ By 1952, frustration was mounting to such an extent that the American representative proposed that, should the US be serving as Prison Chair at the time of an inmate's death, they would simply seize the body so it could 'be removed as expeditiously as possible to the zone and handed over for burial to the family'.⁷⁴ Unsurprisingly, the British and French representatives immediately raised several objections: efforts to 'override' the Soviet Prison Governor could 'jeopardise' the West's ability to moderate prison conditions for inmates, and there was a danger that the Soviets 'might resort to force to prevent the removal of the dead body'. There was also confusion as to what would happen if a death occurred under British or French chairmanship of the prison.⁷⁵

Collectively, these concerns prevented the adoption of such a radical measure and for the remainder of 1952, the western Allies focused firmly on presenting a *démarche* to the Soviets. On 1 September, all three western High Commissioners sent identically worded letters to General Vasily Chuikov, Soviet Commandant of Berlin, requesting a change to disposal policy, alongside other general improvements to the prison regime. However, it took until April 1954 (and a personal request to Molotov himself) before the Four Powers were able to sit down together to discuss these proposals. Finally, on 29 April 1954, a new quadripartite agreement was drawn up, stipulating that 'in the case of the death of one of the major German war criminals, the body of the deceased must be buried in the territory of the Spandau Prison'.⁷⁶ While the original policy of cremation was dropped, the Soviets could not bring themselves to accede to western requests to release the body to next-of-kin, despite the British confessing that similar practices in Hameln had resulted in a lot of 'agitation'.⁷⁷ Agreement, however, was reached regarding the performance of a religious service and the presence of the deceased's immediate family at the funeral.

Reflections

The disposal of the Nazi corpse remained an enormous challenge for the Allies throughout the occupation era and a continual talking point between all four powers. Indeed, this is one area where the general periodisation of the 'occupation era' merits reconsideration. Although West Germany formally became a sovereign state under the Bonn-Paris Conventions of May 1955, Spandau Prison constituted an isolated remnant of Allied rule and the fate of its inmates remained an Allied concern. This situation persisted until the demise of the final prisoner, Rudolf Hess, in 1987.

Furthermore, policies on the criminal corpse were not static but continually revisited, revised and reversed. By 1970, even the Spandau issue was being reconsidered. Practical considerations played a role here as the prison chapel, previously identified as a suitable burial space for prisoners, fell into disrepair. Political considerations, however, were even more important amid the growing realisation that a physical grave for a Spandau prisoner might require the same quadripartite governance as the prison itself. The western Allies thus concluded cremation might be the better policy after all, as the demise of the final prisoner would ensure the removal of Soviet influence from West Berlin.⁷⁸ The Nazi corpse had become a powerful political tool.

The case of the executed war criminals underscores the myriad issues facing the Allies when they arrived in Germany in spring 1945 and, as shown through the Hameln episode, offers a clear example of the emotive dialogues that sprang up between the Allies and the 'ordinary' German population. An ongoing tension persisted between the bureaucratic face of the occupation and the basic human desire to mourn lost relatives, even those who had been tried and condemned to death as war criminals. The failure to agree a common disposal policy across the whole of Germany generated unrest among the German people, having the reverse effect of what the Allies had intended. Rather than simply disappearing from the public consciousness, continual speculation about the whereabouts of Nazi graves and contested efforts at memorialisation, coupled with reburial campaigns, ensured that the names of the dead continued to be remembered.

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Notes

¹ 155 war criminals were executed in Hameln (The National Archives Kew, hereafter TNA, FO1060/4122); 284 in Landsberg (Landsberg Citizens' Association, <http://www.buergervereinigung-landsberg.org/english/historicalfacts/warcriminals.htm>) and, according to sources uncovered so far on this project, 60 in the area around Rastatt (author's correspondence with Stadtarchiv Rastatt).

² See: Donald Bloxham, *Genocide on Trial: War Crimes Trials and the Formation of Holocaust History and Memory* (Oxford: Oxford University Press, 2001); Martin Broszat, 'Siegerjustiz oder Strafrechtliche "Selbstreinigung": Aspekte der Vergangeheitsbewältigung der deutschen Justiz während der Besatzungszeit, 1945-1947', *Vierteljahreshefte für Zeitgeschichte*, 4 (1981): 477-544; Christoph Burchard, 'The Nuremberg Trial and its Impact on Germany', *Journal of International Criminal Justice*, 4 (2006): 800-829; Caroline Sharples, *West Germans and the Nazi Legacy* (New York: Routledge, 2012), 9-29.

³ Norbert Frei, *Adenauer's Germany and the Nazi Past: The Politics of Amnesty and Integration* (New York: Columbia University Press, 2002); Ronald Webster, 'Opposing "Victors' Justice": German Protestant Churchmen and Convicted War Criminals in Western Europe after 1945', *Holocaust and Genocide Studies*, 15, No. 1 (2001): 47-69.

⁴ Richard Evans, *Rituals of Retribution: Capital Punishment in Germany, 1600-1987* (Oxford: Oxford University Press, 1996).

⁵ Norman Goda, *Tales from Spandau: Nazi Criminals and the Cold War* (Cambridge: Cambridge University Press, 2007), 20.

⁶ TNA FO371/57610: Inter-Allied Declarations on the Punishment of War Crimes (1942); Joint Four Nation Declaration, Moscow Conference (October 1943), Yale Law School, *The Avalon Project: Documents in Law, History and Diplomacy*, <http://avalon.law.yale.edu/wwii/moscow.asp>.

⁷ International Conference on Military Trials: Agreement and Charter (8 August 1945), *Avalon Project*, <http://avalon.law.yale.edu/imt/jack60.asp>.

⁸ TNA FO1060/930: Instructions for the Imposition and Execution of Death Sentences, September 1944. On summary executions, see Shlomo Aronson, 'Preparations for the Nuremberg Trial: The OSS, Charles Dwork and the Holocaust', *Holocaust and Genocide Studies*, 12, No. 2 (1998): 259-261.

⁹ TNA FO1060/930: Ministry of Justice Control Branch to Legal Division (23 September 1944).

¹⁰ The USSR abolished the death penalty on 26 May 1947 but reintroduced it on 12 January 1950. A renewed abolition campaign in 1940s Britain was ultimately defeated and capital punishment remained in place until 1965 – see TNA FO937/156: Death Penalty. On capital punishment in Germany, see Evans, *Rituals of Retribution*.

¹¹ See, for example, *The Observer*, 'The Guilt' (22 April 1945) which declared 'whatever punishment international law imposes on these monsters will be trivial compared with the enormity of their misdeeds'.

¹² Control Council Directive No. 30 for the Liquidation of German Military and Nazi Memorials and Museums (May 1946).

¹³ Article 27, Charter of the International Military Tribunal (8 August 1945), *Avalon Project*, <http://avalon.law.yale.edu/imt/jack60.asp>.

¹⁴ Overy, *Interrogations*, 204. Overy bases his argument on the ruling of the Deputy Military Governor, British Zone (11 December 1945) in TNA FO1049/286.

¹⁵ Overy's summary of the final fate of the executed prisoners is based on a second-hand reading of defence lawyer Gustav Steinbauer's memoir (see note 8, p. 589).

¹⁶ TNA FO1060/1385: Quadripartite Commission for the Detention of Major War Criminals (hereafter QC).

¹⁷ TNA FO371/57552: Control Council Directive No. 35: Sentences of the International Military Tribunal (7 September 1946). If the fifteenth day fell upon a Sunday, the execution would be delayed until the Monday.

¹⁸ Control Council Directive No. 35.

¹⁹ Records of QC meetings can be found in TNA FO1060/1384 and FO1060/1385.

²⁰ TNA FO1060/1384: First QC Meeting, Nuremberg (27 September 1946).

²¹ First QC Meeting.

²² Recorded in Gustave M. Gilbert, *Nuremberg Diary* (London: Eyre and Spottiswoode, 1948), 274.

²³ TNA FO371/57552: 43rd meeting of the Control Council, Berlin (10 October 1946).

²⁴ TNA FO1060/1384: Third QC Meeting, Nuremberg (2 October 1946). By the fourth meeting, the plan had been adjusted slightly with 'one or several aeroplanes' now taking off from a Munich airfield, rather than Nuremberg – see minutes of 3 October 1946, TNA FO1060/1384.

²⁵ TNA FO1060/1384: Fifth QC Meeting, Nuremberg (14 October 1946).

²⁶ TNA FO1060/1385: First Report on the Work of the QC (19 October 1946).

²⁷ There is no further documentary evidence on the fate of the IMT defendants after the minutes of the sixth QC meeting on 15 October 1946, suggesting that the military commanders did not trust details of the dispersal point to paper. Quite how, or when, stories about the River Isar emerged is unclear but it is now a standard reference. See, for example: Overy, *Interrogations*, 205; Lawrence Rafal, Herbert R. Reginbogin and Christoph J.M. Safferling (eds), *The Nuremberg Trials: International Criminal Law since 1945* (Munich: K.G. Saur, 2006) 109; Whitney R. Harris, 'Tyranny on Trial', *International Lawyer*, 40, No. 1 (2006), 13.

²⁸ Alfred Jodl is named on a cenotaph in his family's burial plot at Fraueninsel Cemetery in Chiemsee. Wilhelm Keitel has memorial stones in Bad Gandersheim and Hamburg. Joachim Ribbentrop is memorialised in his wife's family's plot near Wiesbaden. See, for example, findagrave.com, 'Alfred Jodl', <http://www.findagrave.com/cgi-bin/fg.cgi?page=pv&GRid=7010&PIpi=2255578> (accessed 10 August 2013).

²⁹ Control Council Law No. 10: Punishment of Persons Guilty of War Crimes, Crimes against Peace and against Humanity, Berlin, (20 December 1945), *Avalon Project*, <http://avalon.law.yale.edu/imt/imt10.asp>

³⁰ Article 3.2, Control Council Law No. 10.

³¹ TNA FO1060/90: Burial of Executed Prisoners.

³² TNA FO1060/90, Report by the Special Legal Research Unit [SLRU], London (19 October 1945). Author's emphasis.

³³ Report by the SLRU.

³⁴ TNA WO309/1645: Bercomb to Concomb, Confidential Message No. TD301 (8 December 1945).

³⁵ This was Wilhelm Frick who was among those executed in October 1946.

³⁶ TNA FO1060/239: Executions Policy Vol. 1.

³⁷ TNA FO1060/4122: Executed War Criminals – Burial Policy.

- ³⁸ Figure cited in TNA FO1060/4122: Bonn Telegram No. 133 (6 March 1954). See also Peter Krone ed., *'Hingerichtetengräber' auf dem Friedhof Wehl, Hameln: Historische Dokumentation* (Hameln, 1987).
- ³⁹ TNA FO1060/4122: Letter from Ernst Schmidt, Kiel (26 November 1950).
- ⁴⁰ TNA FO1024/101: Letter from Therese Schneider, Munich (10 May 1948).
- ⁴¹ TNA FO1060/240: Letters regarding Hermann Lommes (1947-8).
- ⁴² TNA FO1060/239: Letter from Emma Scharschmidt (17 August 1948).
- ⁴³ TNA FO1060/239: Letters from Henny Dufen (30 May and 6 June 1946).
- ⁴⁴ TNA FO1024/101: F.H. Rogers, British Governor Hameln Prison (2 February 1948).
- ⁴⁵ *Bild-Zeitung*, 'German Mass Grave in Hameln Penitentiary' (26 November 1953).
- ⁴⁶ *Illustrierte Post*, 'Secret 202: Though the Grass Grew Above' (8 August 1953).
- ⁴⁷ *Bild-Zeitung*, 'German Mass Grave in Hameln Penitentiary' (26 November 1953); *Hannoversche Allgemeine Zeitung*, 'Menschlicher Abschluss der Zuchthaustragoedie in Hameln: sämtliche Namen trotz Alliierter Geheimhaltung ausfindig gemacht' (3 March 1954).
- ⁴⁸ *Bild-Zeitung*, 'German Mass Grave in Hameln Penitentiary' (26 November 1953).
- ⁴⁹ For more details, see Caroline Sharples, 'Burying the Past? The Post-Execution History of Nazi War Criminals' in *A Global History of Execution and the Criminal Corpse*, ed. Richard Ward (Basingstoke: Palgrave Macmillan, 2015), 249-271.
- ⁵⁰ Eight of these death sentences were commuted to periods of imprisonment. Harold Marcuse, *Legacies of Dachau: The Uses and Abuses of a Concentration Camp, 1933-2001* (Cambridge: Cambridge University Press, 2001), 71.
- ⁵¹ Thomas Raithel, *Die Strafanstalt Landsberg am Lech und der Spottinger Friedhof (1944-1958)* (Munich: Oldenbourg, 2009), appendix.
- ⁵² The scene was captured by ACME staff photographers, Yad Vashem, Digital Collections, 1458/110.
- ⁵³ Cited in Peter Maguire, *Law and War: International Law and American History* (New York: Columbia University Press, 2010), 178.
- ⁵⁴ *Daily Telegraph*, 'Mourners for Hanged Nazis' (8 June 1951).
- ⁵⁵ Article 102 of the Basic Law of the Federal Republic of Germany (1949), German History in Documents and Images, http://germanhistorydocs.ghi-dc.org/sub_document.cfm?document_id=2858
- ⁵⁶ A rare example is Yveline Pendaries, *Les procès de Rastatt: le jugement des crimes de guerre en zone française d'occupation en Allemagne de 1946 à 1954* (Berne: Lang, 1995).
- ⁵⁷ See, for example, *Hartlepool Northern Daily Mail*, 'Shot at Dawn' (20 March 1947).
- ⁵⁸ Author's correspondence with Dr Oliver Fieg, Stadtarchiv Rastatt (15 September 2015).
- ⁵⁹ The five war criminals are Heinrich Arnold, Friedrich Buchs, Jakob Quinten, Fritz Schmoll and Peter Weiss, all members of Neue-Bremm Gestapo camp. See: Kriegstote.org, http://www.kriegstote.org/cgi-bin/baseportal.pl?htx=/Kriegsopfer/kriegsopferfriedhof_bilder&friedhof=Rheinm%FCnster-S%F6llingen
- ⁶⁰ TNA FO1060/4122: Intelligence Division, Baden-Baden to Office of the Legal Advisor, Wahnerheide (9 July 1951).
- ⁶¹ TNA FO1060/545: Allied Kommandatura Meeting: Spandau Prisoners (17 October 1947).
- ⁶² Allied Kommandatura Meeting: Spandau Prisoners.
- ⁶³ Allied Kommandatura Meeting: Spandau Prisoners.
- ⁶⁴ Allied Kommandatura Meeting: Spandau Prisoners.
- ⁶⁵ TNA FO1060/546: Law Committee Report (7 April 1952).

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- ⁶⁶ TNA FO1060/545: Informative Report on Modification of Regulation Disposing of Remains of Prisoners Detained in the Allied Prison, Spandau (11 February 1952).
- ⁶⁷ TNA FO1060/546: Konrad Adenauer to Ambassador Walter J. Donnelly (11 November 1952).
- ⁶⁸ TNA FO1060/545: Baronin von Neurath to Mrs Churchill (undated).
- ⁶⁹ TNA FO1060/545: Telegram No. 725 Wahnerheide to FO (20 July 1951).
- ⁷⁰ Telegram No. 725 Wahnerheide to FO.
- ⁷¹ TNA FO1060/545: Minutes of the 13th Meetings of the Berlin Commandants (31 July 1951).
- ⁷² TNA FO1060/545: Spandau.
- ⁷³ TNA FO1060/545: Spandau. See also TNA FO1060/546; FO371/109330-109334.
- ⁷⁴ TNA FO1060/546: Allied High Commission Meeting of the Council (April 1952).
- ⁷⁵ Allied High Commission Meeting of the Council.
- ⁷⁶ TNA FO371/109333: Report on the fourth Quadripartite Meeting (29 April 1954).
- ⁷⁷ TNA FO371/109333: Eighth Tripartitely Agreed Report on Spandau Talks (27 April 1954).
- ⁷⁸ On this next round of debates, see TNA FCO90/28 and FCO90/31-33: Hess Death Procedures; FCO33/5882-4: Disposal of Hess's Remains; US National Archives RG 59 Entry (A1) 5667, ZZ1004: Hess Remains.